

House Study Bill 623 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON COWNIE)

A BILL FOR

1 An Act relating to consumer lending transactions by modifying
2 provisions applicable to certain loan charges and modifying
3 designated monetary limits specified in the consumer credit
4 code.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 535.2, subsection 2, paragraph a,
2 subparagraph (2), Code 2014, is amended to read as follows:

3 (2) A person borrowing money or obtaining credit in an
4 amount which exceeds ~~twenty-five thousand dollars~~ the threshold
5 amount as defined in section 537.1301, exclusive of interest,
6 for the purpose of constructing improvements on real property,
7 whether or not the real property is owned by the person.

8 Sec. 2. Section 535.2, subsection 2, paragraph a,
9 subparagraph (5), Code 2014, is amended to read as follows:

10 (5) A person borrowing money or obtaining credit for
11 business or agricultural purposes, or a person borrowing money
12 or obtaining credit in an amount which exceeds ~~twenty-five~~
13 ~~thousand dollars~~ the threshold amount, as defined in section
14 537.1301, for personal, family, or household purposes. As
15 used in this paragraph, "*agricultural purpose*" means as defined
16 in section 535.13, and "*business purpose*" includes but is not
17 limited to a commercial, service, or industrial enterprise
18 carried on for profit and an investment activity.

19 Sec. 3. Section 535.8, subsection 1, Code 2014, is amended
20 by adding the following new paragraph:

21 NEW PARAGRAPH. c. "*Points and fees*" means the fees and
22 charges that are included in the definition of points and fees
23 in 12 C.F.R. §1026.32(b)(1).

24 Sec. 4. Section 535.8, Code 2014, is amended by adding the
25 following new subsections:

26 NEW SUBSECTION. 1A. If a lender makes a loan in which
27 the points and fees the borrower is charged by all lenders in
28 connection with the loan does not exceed the amounts specified
29 in 12 C.F.R. §1026.43(e)(3), the loan shall not be subject to
30 the provisions of subsection 2, paragraphs "a", "b", and "d", or
31 subsection 3.

32 NEW SUBSECTION. 1B. This section shall not be construed to
33 change the prohibition against the sale of title insurance or
34 sale of insurance against loss or damage by reason of defective
35 title or encumbrances as provided in section 515.48, subsection

1 10.

2 Sec. 5. Section 535.8, subsection 2, paragraph b,
3 subparagraph (4), Code 2014, is amended by striking the
4 subparagraph.

5 Sec. 6. Section 535.8, subsection 6, Code 2014, is amended
6 to read as follows:

7 6. ~~a. The provisions of this section shall not apply to~~
8 ~~any loan which is subject to the provisions of section 636.46,~~
9 ~~nor shall it apply to origination fees, administrative fees,~~
10 ~~commitment fees or similar charges paid by one lender to~~
11 ~~another lender if these fees are not ultimately paid either~~
12 ~~directly or indirectly by the borrower who occupies or will~~
13 ~~occupy the dwelling or by the seller of the dwelling.~~

14 b. A lender shall not use an appraisal for any purpose
15 in connection with making a loan under this section if the
16 appraisal is performed by a person who is employed by or
17 affiliated with any person receiving a commission or fee
18 from the seller of the property. If a lender violates this
19 ~~paragraph~~ subsection the borrower is entitled to recover
20 any actual damages plus the costs paid by the borrower,
21 plus attorney fees incurred in an action necessary to effect
22 recovery.

23 Sec. 7. Section 535.10, subsection 3, paragraph a, Code
24 2014, is amended to read as follows:

25 a. A lender may collect in connection with establishing
26 or renewing a home equity line of credit the costs listed
27 in section 535.8, subsection 2, ~~paragraph~~ paragraphs "a" or
28 "b", charges for insurance as described in section 537.2501,
29 subsection 2, and a loan processing fee as agreed between
30 the borrower and the lender, and annually may collect an
31 account maintenance fee of not more than fifteen dollars.
32 Fees collected under this subsection shall be disregarded
33 for purposes of determining the maximum charge permitted by
34 subsection 4.

35 Sec. 8. Section 536.1, Code 2014, is amended to read as

1 follows:

2 **536.1 Title — license required.**

3 1. This chapter may be referred to as the "*Iowa Regulated*
4 *Loan Act*".

5 2. With respect to a loan other than a consumer loan, a
6 person shall not engage in the business of making loans of
7 money, credit, goods, or things in action in the amount or of
8 the value of ~~twenty-five thousand dollars~~ the threshold amount
9 or less and charge, contract for, or receive on the loan a
10 greater rate of interest or consideration for the loan than
11 the lender would be permitted by law to charge if the lender
12 were not a licensee under this chapter except as authorized by
13 this chapter and without first obtaining a license from the
14 superintendent of banking.

15 3. With respect to a consumer loan, a person required by
16 section 537.2301 to have a license shall not engage in the
17 business of making loans of money, credit, goods or things
18 in action in the amount or value of ~~twenty-five thousand~~
19 ~~dollars~~ the threshold amount or less and charge, contract
20 for, or receive on the loan a greater rate of interest or
21 consideration for the loan than the lender would be permitted
22 by law to charge if the lender were not a licensee under this
23 chapter, except as authorized by this chapter and without first
24 obtaining a license from the superintendent.

25 4. A person who enters into less than ten supervised loans
26 per year in this state and who neither has an office physically
27 located in this state nor engages in face-to-face solicitation
28 in this state may contract for and receive the rate of interest
29 permitted in this chapter for licensees under this chapter. A
30 "*consumer loan*" means the same as defined in section 537.1301.

31 5. For the purposes of this section, "*threshold amount*"
32 means the same as defined in section 537.1301.

33 Sec. 9. Section 536.13, subsection 5, Code 2014, is amended
34 to read as follows:

35 5. A licensee under this chapter may lend any sum of money

1 not exceeding ~~twenty-five thousand dollars~~ the threshold amount
2 as defined in section 537.1301 in amount and may charge,
3 contract for, and receive on the loan interest or charges at
4 a rate not exceeding the maximum rate of interest or charges
5 determined and fixed by the superintendent under authority of
6 this section or pursuant to subsection 7 for those amounts in
7 excess of ten thousand dollars.

8 Sec. 10. Section 536.15, Code 2014, is amended to read as
9 follows:

10 **536.15 Limitation on principal amount ~~over twenty-five~~**
11 **~~thousand dollars.~~**

12 A licensee shall not directly or indirectly charge, contract
13 for, or receive any interest or consideration greater than the
14 lender would be permitted by law to charge if the lender were
15 not a licensee upon the loan, use, or forbearance of money,
16 goods, or things in action, or upon the loan, use, or sale
17 of credit, of the amount or value of more than ~~twenty-five~~
18 ~~thousand dollars~~ the threshold amount. This section also
19 applies to a licensee who permits a person, as borrower or as
20 endorser, guarantor, or surety for a borrower, or otherwise,
21 to owe directly or contingently or both to the licensee at
22 any time the sum of more than ~~twenty-five thousand dollars~~
23 the threshold amount for principal. For the purposes of this
24 section, "threshold amount" means the same as defined in section
25 537.1301.

26 Sec. 11. Section 537.1301, subsection 13, paragraph a,
27 subparagraph (5), Code 2014, is amended to read as follows:

28 (5) With respect to a sale of goods or services, the amount
29 financed does not exceed ~~twenty-five thousand dollars~~ the
30 threshold amount.

31 Sec. 12. Section 537.1301, subsection 14, paragraph a,
32 subparagraph (4), Code 2014, is amended to read as follows:

33 (4) The amount payable under the lease does not exceed
34 ~~twenty-five thousand dollars~~ the threshold amount.

35 Sec. 13. Section 537.1301, subsection 15, paragraph a,

1 subparagraph (5), Code 2014, is amended to read as follows:

2 (5) The amount financed does not exceed ~~twenty-five~~
3 ~~thousand dollars~~ the threshold amount.

4 Sec. 14. Section 537.1301, subsection 15, paragraph b,
5 subparagraph (2), Code 2014, is amended to read as follows:

6 (2) A debt which is secured by a first lien on real property
7 ~~and which is incurred primarily for the purpose of acquiring~~
8 ~~that real property, or refinancing a contract for deed to that~~
9 ~~real property, or constructing on that real property a building~~
10 ~~containing one or more dwelling units.~~

11 Sec. 15. Section 537.1301, subsection 21, paragraph b, Code
12 2014, is amended by adding the following new subparagraph:

13 NEW SUBPARAGRAPH. (5) An initial charge imposed by a
14 financial institution for returning an item presented against
15 non-sufficient funds or for paying an item that overdraws
16 an account. For the purposes of this subparagraph, "item"
17 includes any form of authorization or order for withdrawal of
18 funds from an account such as a check, automated teller machine
19 card, debit card, automated clearinghouse or other means.

20 Sec. 16. Section 537.1301, Code 2014, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 21A. "*Financial institution*" means and
23 includes any bank incorporated under the provisions of any
24 state or federal law, any savings and loan association or
25 savings bank incorporated under the provisions of state or
26 federal law, or any credit union organized under the provisions
27 of any state or federal law.

28 Sec. 17. Section 537.1301, Code 2014, is amended by adding
29 the following new subsection:

30 NEW SUBSECTION. 46. "*Threshold amount*" means the threshold
31 amount, as determined by 12 C.F.R. §226.3(b), in effect during
32 the period the consumer credit transaction was entered into.

33 Sec. 18. Section 537.2501, subsection 1, paragraph e, Code
34 2014, is amended by adding the following new subparagraph:

35 NEW SUBPARAGRAPH. (5) Fees or charges listed in section

1 535.8, subsection 2, paragraphs "a" and "b".

2 Sec. 19. Section 537.2507, Code 2014, is amended to read as
3 follows:

4 **537.2507 Attorney fee.**

5 With respect to a consumer credit transaction, the agreement
6 may not provide for the payment by the consumer of attorney
7 fees. However, in a consumer credit transaction with an amount
8 financed exceeding twenty-five thousand dollars secured by an
9 interest in land, the agreement may provide for the payment
10 by the consumer of reasonable attorney fees. A provision in
11 violation of this ~~subsection~~ section is unenforceable.

12 Sec. 20. Section 537.3604, subsection 8, paragraph e, Code
13 2014, is amended to read as follows:

14 e. The amount payable under the consumer rental purchase
15 agreement does not exceed ~~twenty-five thousand dollars~~ the
16 threshold amount.

17 Sec. 21. Section 537.6201, subsection 2, Code 2014, is
18 amended to read as follows:

19 2. Debt collectors, as defined in section 537.7102,
20 subsection 5, to whose acts, practices, or conduct this
21 chapter applies pursuant to section 537.1201 if the total debt
22 collected by a debt collector in the preceding calendar year
23 exceeds ~~twenty-five thousand dollars~~ the threshold amount, or
24 if not, if the total debt collected during the current calendar
25 year exceeds twenty-five thousand dollars, but this part does
26 not apply to those licensed, certified, or otherwise authorized
27 to engage in business under chapter 524, 533, 536, or 536A.

28 **EXPLANATION**

29 The inclusion of this explanation does not constitute agreement with
30 the explanation's substance by the members of the general assembly.

31 This bill makes changes related to consumer lending
32 transactions by modifying provisions applicable to residential
33 real estate loan charges and monetary limits specified in the
34 consumer credit code.

35 The bill modifies several provisions contained in Code

1 section 535.8, relating to loan charge limitations applicable
2 to loans of money which are wholly or in part to be used for the
3 purpose of purchasing real property that is a single-family or
4 two-family dwelling occupied or to be occupied by the borrower.
5 The bill defines "points and fees" by referencing an existing
6 definition in the Code of Federal Regulations relating to the
7 Truth in Lending Act. The bill provides that if a lender makes
8 a loan in which the points and fees charged by all lenders in
9 connection with the loan does not exceed amounts specified in a
10 referenced section of the Code of Federal Regulations, the loan
11 will not be subject to the monetary limits on loan origination
12 or processing fees and broker fees, the limits on the types of
13 permissible lender charges, and relating to payment of interest
14 reduction fees in exchange for a lower rate of interest. The
15 bill transfers a provision in Code section 535.8, subsection
16 2, relating to the prohibition against the sale of title
17 insurance or sale of insurance against loss or damage by reason
18 of defective title or encumbrances to Code section 535.8, new
19 subsection 1B.

20 The bill modifies monetary limits applicable to certain
21 consumer credit transactions specified in Code chapter 537.
22 Currently, the definitions of consumer credit sale, consumer
23 lease, consumer loan, and consumer rental purchase agreement,
24 provide that the amount financed or payable shall not exceed
25 \$25,000. The bill deletes references to this monetary amount,
26 and provides instead that the amount financed or payable shall
27 not exceed a "threshold amount". The term "threshold amount"
28 is defined in the bill as the applicable threshold amount in
29 effect during the period a consumer credit transaction was
30 entered into, as determined pursuant to a provision of the
31 federal Truth in Lending Act relating to the calculation of a
32 threshold amount in connection with extensions of credit which
33 are exempt from regulation under the federal Act. A similar
34 change is made regarding the applicability of notification and
35 fee provisions in the Code chapter to debt collectors.

1 The bill deletes similar references to the monetary amount
2 of \$25,000, and substitutes the term "threshold amount", with
3 reference to determining rates of interest in connection
4 with borrowing money or obtaining credit for the purpose of
5 constructing improvements on real property, for business or
6 agricultural purposes, or for personal, family, or household
7 purposes. The term "threshold amount" is also substituted for
8 the monetary amount of \$25,000 with respect to regulated loan
9 licensing and lending requirements imposed pursuant to Code
10 chapter 536.

11 The bill provides that a lender in a home equity line of
12 credit transaction may impose loan origination or processing
13 fees or broker fees authorized for single-family or two-family
14 real property loans in Code section 535.8. The bill also
15 authorizes these fees, and additional costs in connection with
16 originating a loan, to be charged in connection with consumer
17 credit transactions involving a debt secured by an interest in
18 land.

19 Currently, the definition of "consumer loan" in Code chapter
20 537 does not include a debt that is secured by a first lien on
21 real property and that is incurred primarily for the purpose of
22 acquiring that real property or refinancing a contract for deed
23 to that real property or constructing on that real property
24 a building containing one or more dwelling units. The bill
25 modifies this provision to state that a consumer loan does
26 not include a debt that is secured by a first lien on real
27 property.

28 The bill provides, with reference to the definition
29 of "finance charge" contained in Code chapter 537, that a
30 "finance charge" does not include an initial charge imposed
31 by a financial institution for returning an item presented
32 against non-sufficient funds or for paying an item that
33 overdraws an account. For the purposes of this subparagraph,
34 the bill defines "item" to include any form of authorization
35 or order for withdrawal of funds from an account such as a

1 check, automated teller machine card, debit card, automated
2 clearing house or other means. The bill defines a "financial
3 institution" in the Code chapter to mean and include any bank
4 incorporated under the provisions of any state or federal law,
5 any savings and loan association or savings bank incorporated
6 under the provisions of state or federal law, or any credit
7 union organized under the provisions of any state or federal
8 law.

9 The bill further provides that in connection with a consumer
10 credit transaction, reasonable attorney fees may be charged
11 when the amount financed exceeds \$25,000 secured by an interest
12 in land.